DOCUMENT RESUME

ED 448 900 PS 029 125

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TITLE	Rights of the Child in Costa Rica: Report Concerning the Application of the Convention on the Rights of the Child by the Republic of Costa Rica.
INSTITUTION	World Organisation Against Torture (OMCT), Geneva (Switzerland).
PUB DATE	2000-01-00
NOTE	34p.; Report presented at a Session of the Committee on the Rights of the Child (23rd, Geneva, Switzerland, January 2000).
AVAILABLE FROM	OMCT, P.O. Box 21-8, rue du Vieux-Billard, CH 1211, Geneva 8, CIC, Switzerland. Tel: 4122-809-49-39; Fax: 4122-809-49-29; Web site: http://www.omct.org; e-mail: omct@omct.org.
PUB TYPE	Reports - Evaluative (142) -- Speeches/Meeting Papers (150)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	Change Strategies; Child Abuse; Child Advocacy; Child Safety; *Child Welfare; Childhood Needs; Children; *Childrens Rights; Civil Rights Legislation; *Compliance (Legal); Foreign Countries; Government Role; Law Enforcement; Safety; Victims of Crime; Well Being
IDENTIFIERS	*Costa Rica; Torture; Torture Victims; *United Nations Convention on Rights of the Child; Victimization

ABSTRACT

This report to the United Nations Committee on the Rights of the Child contains observations of the World Organisation Against Torture (OMCT) concerning the application of the U.N. Convention on the Rights of the Child by the nation of Costa Rica. The report's introduction notes that in addition to ratifying the Convention, Costa Rica's constitution has several provisions aimed at giving special protection to children, and there is now a Children's Ombudsman within the office of the People's Ombudsman. However, the Costa Rican legislation still contains loopholes which could impede effective protection of children's rights, and Costa Rican authorities have failed to supply the OMCT information concerning conditions in which children are detained, programs of rehabilitation for those children, protection of children against ill-treatment and torture, and penalties applied to officials or agents of the State responsible for violations perpetrated against children. The report next presents recommendations in these areas: (1) criminal responsibility of the child; (2) right to be heard in any procedure; (3) sanctions applied to children; (4) definition and prohibition of torture-protection measures; (5) prosecution of those responsible for torture and physical ill-treatment of children; (6) protection during detention; and (7) sanctions in case of arbitrary arrest or detention. The report then provides concluding observations and recommendations, including follow-up measures undertaken and progress achieved by the State party, factors and difficulties impeding further progress in implementation of the Convention; and principal subjects of concern and committee recommendations in areas including legislation and institutional reform, coordination and monitoring, civil rights and freedoms, family environment and alternative care, basic health and welfare, and education, leisure, and cultural activities. (HTH)

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Rights of the Child in Costa Rica

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Rights of the Child in Costa Rica

OMCT

OPERATING THE SOS-TORTURE NETWORK

The aim of OMCT country reports is to prevent torture

In its reports on children's rights, OMCT aims to analyse national law in terms of the international commitments that a government has made – for example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child who use them to analyse how well a country is fulfilling its international commitments with regard to children. Their recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

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COMMITTEE ON THE RIGHTS OF THE CHILD
23rd Session - Geneva, January 2000

Report Concerning the Application of the Convention on the Rights of the Child by the Republic of Costa Rica

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Introduction

1. The Convention on the Rights of the Child was ratified by Costa Rica on 21 August 1990. The government thereby committed itself to undertake all the necessary measures to implement the provisions of the Convention. Costa Rica has ratified and incorporated into its national legislation several other international Conventions, such as the Inter-American Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, all of which are fully enforceable in Costa Rica's domestic order and are considered of higher importance than national laws, according to article 7 of Costa Rican Constitution.

2. The Political Constitution of the Republic of Costa Rica (Constitución Política de la República de Costa Rica) has several provisions aimed at giving a special protection to children such as Article 51, which mandates that the State shall protect children; Article 55 which establishes a special institution called "Patronato Nacional de la Infancia" in charge of such protection and Article 71, which mandates that laws will give special protection to child workers.

3. Furthermore, article 7 of the Constitution provides for the superiority of the international treaties (which have been approved by the Legislative Assembly) over national laws.

4. Article 44 establishes the possibility of incommunicado detention for 48 hours, without judicial warrant, and for a period up to 10 days with a judicial warrant.

5. Article 372 criminalizes offences of international nature such as to infringe human rights treaties ratified by Costa Rica.

6. The Juvenile Criminal Justice Act (Ley de Justicia penal Juvenil) entered into force on 30 April 1996 and the Children's and Young People's Code (Código de la Niñez y la Adolescencia) on 6 February 1998, both of which derogate the former legislation on minors. Both Codes adopted most of the principles embodied in the Convention on the Rights of the Child. The former is addressed to children in conflict with the law ; the latter is aimed at protecting children, particularly children victims of abuse or violence.

7. OMCT welcomes the existence of the Children's Ombudsman within the Office of the People's Ombudsman, who undoubtedly will contribute to guaranteeing the rights of children. It also welcomes the possibility for any child to file the judicial remedy of Amparo (CRC/C/65/Add.7, § 19, 20 and 28).

8. OMCT observes that Costa Rican legislation still contains loopholes, which could represent an obstacle to the effective protection of the rights of the child. Several provisions of Costa Rica's internal law, such as those in the Criminal Code and the Criminal Procedure Code, appear to contradict the aims of the Convention and other International Instruments ratified or signed by Costa Rica.

9. OMCT regrets that the Costa Rican authorities have failed to supply information of importance in their report (CRC/C/65/Add.7), particularly concerning conditions in which children are detained, programs of rehabilitation to those children, protection of children against ill-treatment and torture and penalties applied to officials or agents of the State responsible for violations perpetrated against children.

II. General Information

10. Article 1 of the Convention on the Rights of the Child defines a child as follows: " a child means every human being below the age of 18 unless under the applicable law, majority is attained earlier." According to Costa Rica's legislation, a child is a person under 12 and an adolescent is a person between 12 and 18 (Article 2, Children's and Young People's Code).

11. OMCT notes with satisfaction that the newly adopted Children's and Young People's Code establishes several principles in accordance with the Convention on the Rights of the Child. Among them, OMCT underlines the following: the principle of the best interest of the child (article 5); this principle should now be applied when a private or public action deals with a child. It also establishes several fundamental rights that especially address children, such as the right to life (article 12), the right to be protected from abuse (article 13), the right to liberty (article 14), the right to physical and psychological integrity (article 24), the right to file a complaint (article 104) and procedural rights (article 107), amongst others.

12. The Juvenile Criminal Justice Act also establishes some general principles (acting as a framework) in accordance with human rights standards such as the protection of the minor, the importance of his or her own interests, the respect for his or her rights, his or her integral education, and his or her reintegration into the family or the society (article 7). These principles are further developed in additional articles regarding: the presumtion of innocence until proven guilty (article 15); the right to due process (article 16); the rule of *Res Judicata* or the right of *Non Bis In Idem* (article 18); the right to be accused or prosecuted under the most favorable law (article 19); the right to privacy (article 20); the principle of confidentiality of the minor's identity (article 21); the right to defence (article 23), the right to *locus standing* (article 24), etc.

13. OMCT's analyses will establish whether or not these principles are applied in the legislation and how they are developed. In particular, the purpose of this report is to assess how the legal development aimed at protecting either children in conflict with

the law or children victims of violence and abuse has been construed, and what its advantages and disadvantages are, as well as its strengths and its weaknesses.

Criminal Responsibility of the Child

14. The Convention on the Rights of the Child is very clear on the necessity of establishing "a minimum age below which children shall be presumed not to have the capacity to infringe upon penal law" (art. 10 §3 (a)).

15. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The "Beijing Rules") provide that the beginning of the criminal responsibility of the child "shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and psychological maturity" (§ 4.1.).

16. OMCT notes that with the adoption of the Juvenile Criminal Justice Act and the Children's and Young People's Code, Costa Rica has a legislation that is almost in accordance with the Convention on the Rights of the Child, and compliments the State of Costa Rica for improvements in the area of criminal responsibility of the child, brought about by the current legislation.

17. Costa Rica's Juvenile Criminal Justice Act provides in its article 1 that the Special Adolescent Criminal Justice established by this Code will apply to "any person between 12 and 18 years-old who has committed either an offence or a contravention as established in the Criminal Code or other special laws".[1] Therefore, according to the new Costa Rican juvenile justice legislation, the criminal responsibility of the child starts at 12, while children under 12 are exempt from criminal responsibility.

18. When considering measures applicable to children, the Juvenile Criminal Justice Act further divides them into two legal categories: firstly, children between 12 and 15 years of age, and secondly, children between 15 and 18 years of age (Article 4).

19. While parents of children between 12 and 15 years of age have the right to be present at the initial interrogation procedures (indagatoria previa), parents of children above 15 and under 18 can be present only at the request of the minor; affidavits given by minors between 12 and 15 years-old do not have the same formalities as those of adults, while

1 - *Article 1 reads: "Serán sujetos de esta ley todas personas que tengan una edad comprendida entre los doce años y menos de dieciocho años al momento de la comisión de un hecho tipificado como delito o contravención en el Código Penal o leyes especiales".*

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affidavits given by the second category of children must fulfill the same formalities required of affidavits given by adults (Articles 82 and 83).

20. This categorical difference is important when the sanction imposed upon a minor is that of detention in specialized centers. According to Article 131 of the Juvenile Criminal Justice Act, the detention term may be up to 15 years when applied to minors between 15 and 18 years old and up to 10 years when applied to minors between 12 and 15 years old. Furthermore, according to Article 139, minors between 12 and 15 years old shall be kept apart from minors between 15 and 18 years old.

Right to be Heard in any Procedure

21. According to Article 23 of the Juvenile Criminal Justice Act, minors have the right to be assisted by a defender from the beginning of the police inquiry until the end of the sanction. In addition, Article 105 of the Child en's and Young People's Code provides for the minor's participation as well as for the minor's right to be heard in any process in which he or she is involved. Moreover, Article 107 of the same Code provides for the right of minors involved in any process to, among others:

- be heard in his or her own language and to have his or her opinions taken into account;
- be assisted by a translator;
- in any hearing, be accompanied by a social worker, a psychologist or any person who the minors trusts;
- receive clear information on the meaning of each of the actions and decisions affecting him or her.

Furthermore, Article 108 of the same Code establishes that minors over 15 years of age have judicial standing in any process in which their interests are under discussion. In the other cases, minors are represented by their parents or legal representatives.

Sanctions Applied to Children

22. According to Article 121 of the Juvenile Criminal Justice Act, children held responsible for a criminal act are subjected to the following sanctions:

Socio-educational measures such as:

- admonition and warning;
- assisted freedom;
- community services;
- reparation of damages.

Orientation and supervision measures such as:
- to be placed in a special area to live;
- to not threaten others;
- to not visit either bars, clubs or similar centers;
- to study;
- to work;
- to refrain from taking alcohol, hallucinogenic, narcotic or toxic substances producing addiction;
- to give medical treatment to the minor for detoxification.

Restriction of liberty such as:
- domicile detention;
- free time restriction;
- detention in specialized centers.

According to Article 131, this measure is exceptional and applies either when the sanction for adults is imprisonment up to six years or when the minor has unjustifiably failed to fulfill either the socio-educational measures or the orientation and supervision measures. In this case, the minor can be released on leave, according to article 132.

23. Article 122 further establishes the criteria that allow the judge to order one of the aforementioned measures:
- background of the minor;
- verification of the perpetration of the offence;
- verification of the minor's participation in the offence;
- ability to comply with the sanction: proportionality, rationality and suitability of the sanction;
- age of the minor as well as his or her personal, familial and social condition;
- efforts undertaken by the minor to compensate the damage.

24. OMCT would like to draw the attention of the Committee to two criteria: verification of the perpetration of the offence and verification of the minor's participation in the offence. As the article is currently drafted, it appears that even a minor who has committed no offence could be sanctioned. Although it seems to be a drafting mistake, OMCT suggests that the Committee ask the Government to redraft this article and eliminate these two criteria because a sanction can be imposed only on minors for whom perpetration of an offence has been proven.

25. Chapter III embodies all guarantees to minors who have been sanctioned. Article 134 establishes an individual program for each minor. According to Article 138, the minor has the following rights:

- the right to life, dignity and physical and moral integrity;
- the right to equality and to no discrimination ;
- the right to remain within the family;
- the right to medical care, educational and social services;
- the right to be informed to his or her rights;

26. Article 139 further provides for the set up of at least two centers in which minors can be held in detention: one for females and the other for males; minors between 12 and 15 years old will be kept apart from minors between 15 and 18 years old. Moreover, minors in provisional detention will be held apart from minors in long-term detention.

27. OMCT recommends that the Committee ask Costa Rica to give further specifications about the "specialized centers". Costa Rica should specify: How many centers already exist? Has personnel working with children received adequate training on the provisions of the domestic law and on the rights of the child? How are the psychological and psychiatric treatment programs carried out?

28. OMCT notes that according to the Juvenile Criminal Justice Act, children are able to fully exercise their procedural rights, in particular the right to be assisted by a lawyer (article 37), the right not to be forced to give affidavits (articles 81 and 101), the right to appeal (by him/herself or through a lawyer or his/her parents) against a judicial decision.

29. However, according to article 114 of the Juvenile Criminal Justice Act, the appeal against the judge's decision must be made no later than three days, and must include new proof that the defendant intends to invoke. This delay seems to be too short and could represent a potential obstacle regarding the right to appeal.

30. It is worth noting that Article 14 [2] of the Juvenile Criminal Justice Act establishes a provision which seems to OMCT to be in contradiction with general modern principles of criminal law. Additionally, it puts the legal human rights development aimed at protecting children in Costa Rica at stake.

2 - *Artículo 14.- Principio de lesividad. Ningún menor de edad podrá ser sancionado si no se comprueba que su conducta daña o pone en peligro un bien jurídico tutelado.*

In effect, this article reads as follows: "No minor will be the subject of any sanction unless there is evidence that his or her conduct either damages or endangers a legally protected individual".

This provision is in itself very risky because the use of this article could lead to abuses and to unfair sanctions based on grounds that could depend on the criteria of a judge.

Definition and Prohibition of Torture-Protection Measures

31. According to article 1 of the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, "torture" is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, intimidating or coercing him or a third person, or if for any reason based on discrimination of any kind, such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

32. The Convention on the Rights of the Child, which Costa Rica has ratified, forbids any act of torture or other cruel, inhuman or degrading treatment or punishment of minors (art. 37 a). Moreover, Costa Rica has ratified the International Covenant on Civil and Political Rights which forbids torture in its article 7. Finally, Costa Rica ratified the UN Convention Against Torture, and therefore committed itself to, among others:

- take effective legislative, administrative, judicial or other measures to prevent acts of torture (article 2);
- ensure that all acts of torture are offences under its criminal law (article 4);
- ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military personnel, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment (article 10);
- ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable

ground to believe that an act of torture has been committed (article 12); to ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain and to have his case promptly and impartially examined by, its competent authorities (article 13).

33. OMCT regrets that Costa Rica's Report (CRC/C/65/Add.7) makes no reference to torture and other cruel, inhuman or degrading treatment or punishment, nor does it make any reference on the existing internal legislative provisions that protect minors against torture and the existing sanctions for those responsible of torture.

34. OMCT also regrets that there is no provision in the Costa Rican Constitution proscribing torture or other cruel, inhuman or degrading treatment or punishment. In addition, it notes the absence of any definition of torture in the country's criminal legislation and no reference to psychological torture.

35. OMCT notes with great regret that neither the Costa Rican Criminal Code nor the Children's and Young People's Code forbids torture, nor do they make any reference to torture. These texts only address the question in an indirect way. Particularly, the Children's and Young People's Code establishes the right of the child to be protected from any form of abuse, of cruel, inhuman or degrading nature (art. 13); the right to physical, psychological and moral integrity (art. 24). In addition, article 81 establishes that children will not be subjected to interrogation under duress.

36. OMCT recommends to the Committee to urge Costa Rica to adopt in the briefest possible delay provisions expressly forbidding the torture of adults and children, as well as a definition of torture in conformity with international standards, including psychological torture.

37. OMCT has received information on the failure of the public institution in charge of the child (Patronato Nacional de la Infancia) to fulfill its protective function. According to both Article 6 of the Organizational Law of the "Patronato Nacional de la Infancia", (Ley Orgánica del Patronato Nacional de la Infancia) and Article 5 of the Family Code, whenever a minor has been a victim of a crime, abuse, violence or abandonment, the "Patronato" must take part in the judicial criminal case, on behalf of the child's interests.

38. However, a law scholar [3] has stated that since 1930 (until 1996, since the book was edited in 1996), the "Patronato" has never taken an active part in criminal cases in which minors are involved as victims. According to the author, unless ordered by the judge, the "Patronato" does not act by itself in defence of the child's interests.

39. Therefore, OMCT suggests that the Committee ask the Costa Rican authorities what exactly the functions of the "Patronato Nacional de la Infancia" are with regard to the protection of children and to give examples of their latest actions aimed at fulfilling.

Prosecution of Those Responsible For Torture and Physical Ill-Treatment of Children

40. Regretably, Costa Rica's Criminal Code makes no reference to torture and no sanction is provided for those public officials responsible for torture.-Costa Rican law only provides sanctions for acts qualified as "injuries"[4]. The Children's and Young People's Code sets up a committee within hospitals and health centers to take over cases of child abuse. The Code also establishes that managers and staff in charge of both public and private health centers have the duty of denouncing before the Office of the Public Prosecutor (Ministerio Público) cases in which children may have been ill-treated or have suffered abuse (art. 49).

41. Article 104 of the Children's and Young People's Code guarantees minors the right to file a complaint for any action against her or him. However, the provision neither specifies which authority she or he can address him/herself nor whether the complaint can be criminal.

42. The Committee should ask Costa Rica 1) to specify what the applicable provisions to sanction acts of torture committed against children are, 2) what the sanctions applicable to perpetrators of torture upon children are, 3) what the procedure to start investigating an alleged act of torture upon children is, 4) whether or not an investigation is subjected to a formal denunciation on the part of the victim, 5) what the preventive, protective, rehabilitation and reparation measures applicable to child victims of torture are.

3 - HIDALGO MURILLO, José Daniel, La Aplicación de la Ley de Justicia Penal Juvenil, Ed. Investigaciones Jurídicas S.A., Costa Rica, 1996, p. 22.

4 - Lesiones.

Protection During Detention

Current Situation

According to information documented by OMCT, as of 14 May 1999, 56 minors were detained in 3 different centers. Only juveniles between 12 and 18 are, in practice, detained in such centers under charges of homicide (homicidio) and theft carried out under special circumstances such as using weapons, destructive behaviour, taking advantage of disasters, etc., (robo agravado, as described in Article 213 of the Criminal Code). In addition, 184 minors were under programs of alternative measures. There are no reports of abuse by the police.

Legal Aspects

43. OMCT notes with satisfaction that the adoption of the Juvenile Criminal Justice Act and the Children's and Young People's Code constitute a considerable improvement in the legal protection of detained children. Most of the provisions of the new Code are consistent with articles 37 and 40 of the Convention on the Rights of the Child and with the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

44. OMCT welcomes the fact that Costa Rica's Juvenile Criminal Justice Act provides for special procedures, authorities and institutions for children and adolescents accused of committing penal offences.

45. According to article 131 of the Juvenile Criminal Justice Act, minors between 12 and 18 years of age who have either committed offences ("delitos dolosos") normally sanctioned with more than six years' imprisonment, or who have failed to comply with the socio-educational measures or the orientation and supervision measures, are placed in specialized centers. As explained before, whereas minors between 12 and 15 years old can be sentenced to up to 10 years' imprisonment, minors between 15 and 18 years old can be sentenced to up to 15 years' imprisonment.

46. According to article 138 of the Juvenile Criminal Justice Act, detained children in specialized centers have the following right to be informed about:
- disciplinary sanctions that can be applied upon them;
- their rights with regards to prison staff;
- contents of the personal program aimed at reinserting the detainee in society;

- visits, days of leave, right to submit petitions, right to be separated from criminals already sentenced by the ordinary justice, right to be placed in a place where it is possible to carry out the reinsertion personal program, right to neither be held in incommunicado detention nor be subjected to corporal punishment and other relevant rights accorded to adults.

As drafted, this construction of rights seems not to be very clear. In effect, rights of detained children are concentrated in one: the right to be informed of other rights, as if the former was of higher rank than the others. Regarding this issue, OMCT is of the opinion that rights of detained children are so important that they should be established precisely in the law. Hence, it suggests to the members of the Committee on the Rights of the Child to ask the Costa Rican authorities why fundamental rights of detained children are subsidiary to the right of being informed of such rights and consequently, what are the implications of such drafting.

47. Concerning police detention, the Costa Rican Juvenile Criminal Justice Act states that in case of flagrant arrest, the Juvenile Judicial Police will immediately submit the minor to the Juvenile Criminal Judge (art. 41). Furthermore, article 42 of the same Act provides for a similar measure in case of detention by the Administrative Police. If these provisions are applied in practice, they appear to be in accordance with international standards, particularly with due process guarantees.

48. OMCT notes with concern that the Constitution provides for incommunicado detention delay of 48 hours without warrant (art. 44), and for a maximum of ten days in incommunicado detention with warrant. Therefore, OMCT would suggest that the Committee ask the Costa Rican authorities whether this provision may be applied to children and recommends that this article be abrogated in order to match international human rights standards. In addition, article 37 of the Constitution provides for administrative detention of 24 hours and suggests the Committee to request the Government of Costa Rica to modify this article in the same terms as drafted to minors, which proscribes administrative detention.

49. OMCT recommends that the Committee ask Costa Rica to explain what is the level of human rights training that police agents in charge of children (so called Judicial Juvenile Police) have received or are

receiving, in accordance with article 85 of the Rules for the Protection of Juveniles Deprived of their Liberty. Costa Rica should also explain what are the guarantees and means of protection for arrested children against physical ill-treatment and torture, in accordance with articles 63 and 64 of the Rules for the Protection of Juveniles Deprived of their Liberty, and article 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention.

50. Concerning the maximum duration of provisional detention, OMCT notes that article 59 of the Juvenile Criminal Justice Act establishes that provisional detention is a measure of exceptional nature, especially when applied to minors between 12 and 15. Furthermore, it provides for a maximum term of two months, which can be extended by the judge for four more months.

Sanctions in Case of Arbitrary Arrest or Detention

51. Article 37 of the Constitution sets up the prohibition of arbitrary arrest and detention. Article 190 of the Criminal Code provides for 4 and 12 years' imprisonment term to those authorities and public agents who hide a detainee, who refuse to take her or him to the Judge or, in general, who fail to fulfill their obligations under article 37 of the Constitution.

52. Although there is no specific provision regarding children, OMCT has received no information on cases of arbitrary detention of children in Costa Rica.

Recommendations and Conclusions

53. OMCT suggests the Committee to ask to the Costa Rican authorities to supply information on conditions in which children are detained, programs of rehabilitation of those children, protection of children against ill-treatment and torture and penalties applied to officials or agents of the State responsible for violations perpetrated against children.

54. OMCT recommends that the Committee ask Costa Rica to give further specifications about the "specialized centers" Costa Rica should specify: How many centers already exist? Has personnel working with children received adequate training on

the provisions of the domestic law and on the rights of the child? How are the psychological and psychiatric treatment programs carried out?

55. According to article 114 of the Juvenile Criminal Justice Act, the appeal against the judge's decision must be made no later than three days, and must include the new evidence which the defendant intends to introduce. This delay seems to be excessively short and could represent a potential obstacle to the exercise of such a right of appeal. Therefore, OMCT suggests that the Committee to request to the authorities of Costa Rica to extend this delay.

56. Article 14 of the Juvenile Criminal Justice Act establishes a provision which seems to OMCT to be in contradiction with general modern principles of criminal law. Additionally, it puts at stake the legal human rights development aimed at protecting children in Costa Rica.

In effect, this article reads as follows: "No minor will be the subject of any sanction unless there is evidence that his or her conduct either damages or endangers a legally protected individual". Therefore, OMCT would suggest the Committee to ask the authorities of Costa Rica how they interpret this rule.

57. The Committee should ask Costa Rica 1) to specify what are the applicable provisions to sanction acts of torture committed against children, 2) what are the sanctions applicable to perpetrators of torture against children, 3) what is the procedure to start investigating an alleged act of torture upon children, 4) whether or not an investigation is subjected to a formal denunciation on the part of the victim 5) which are the preventive, protective and reparation measures applicable to child victims of torture?

58. OMCT is of the opinion that rights of detained children are so important that they should be precisely established in the law. Hence, it suggests to the members of the Committee on the Rights of the Child to ask the Costa Rican authorities why in article 138 of the Juvenile Criminal Justice Act, fundamental rights of detained children are subsidiary to the right of being informed of such rights and consequently, what are the implications of such drafting.

59. OMCT would suggest the Committee to ask the Costa Rican authorities whether incommunicado detention delay of 48 hours

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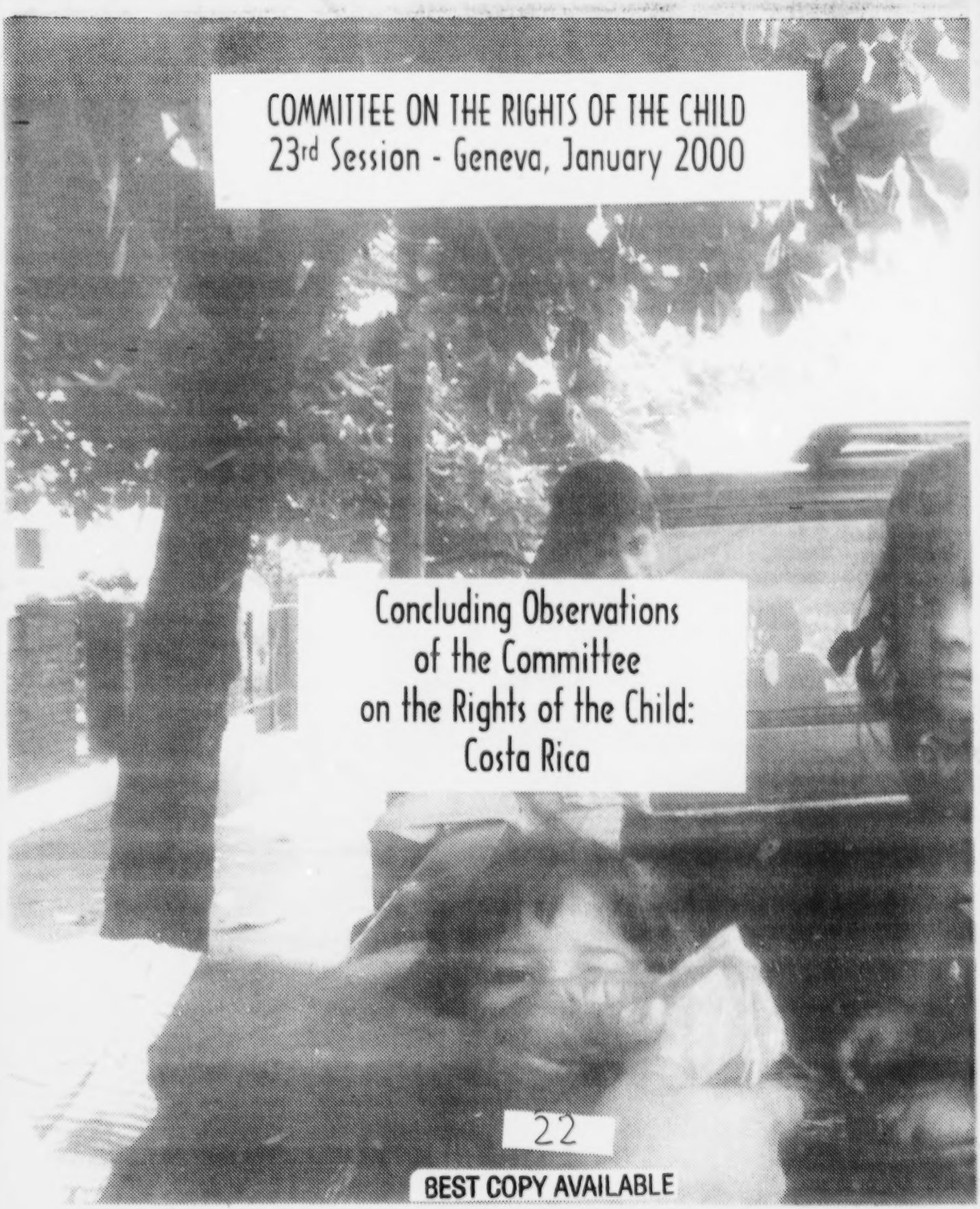
without warrant (art. 11 of the Constitution) may be applied to children and recommends that this article be abrogated in order to match international human rights standards. In addition, article 37 of the Constitution provides for administrative detention for 24 hours and suggests that the Committee request the Government of Costa Rica to modify this article in the same terms as drafted for minors, which proscribes administrative detention.

60. OMCT recommends that the Committee ask Costa Rica to explain what is the level of human rights training that police agents in charge of children (so called Judicial Juvenile Police) have received or are receiving, in accordance with article 85 of the Rules for the Protection of Juveniles Deprived of their Liberty. Costa Rica should also explain what are the guarantees and means of protection of arrested children against physical ill-treatment and torture, in accordance with articles 63 and 64 of the Rules for the Protection of Juveniles Deprived of their Liberty, and article 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention.

61. OMCT recommends that the Committee ask Costa Rica about the detention centres exclusively destined for adolescents, referred to in article 131 of the Juvenile Criminal Justice Act. Do these centres already exist? How many are there? Did the personnel in the detention and prison facilities receive training on the specific legislation on children and in general, on the Convention on the Rights of the Child ?



COMMITTEE ON THE RIGHTS OF THE CHILD
23rd Session - Geneva, January 2000

Concluding Observations of the Committee on the Rights of the Child: Costa Rica

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Consideration of Reports Submitted by States Parties Under Article 44 of the Convention

Concluding observations of the Committee on the Rights of the Child: Costa Rica

1. The Committee considered the second periodic report of Costa Rica (CRC/C/65/Add.7) at its 595th and 596th meetings (see CRC/C/SR. 595-596), held on 14 January 2000, and adopted At the 615th meeting, held on 28 January 2000, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission on 20 January 1998 of the State party's second periodic report. However, it notes that the State party's report did not follow the guidelines for periodic reports established by the Committee, with the result that it did not sufficiently cover important areas of the Convention, such as general principles, civil rights and freedoms, and family environment and alternative care. The Committee takes note of the written replies to its list of issues (CRC/C/Q/COS.2), while regretting their late submission. The Committee is encouraged by the constructive, open and frank dialogue it had with the State party's delegation and welcomes the positive reactions to the suggestions and recommendations made during the discussion. The Committee acknowledges that the presence of a delegation directly involved in the implementation of the Convention allowed for a fuller assessment of the situation of the rights of children in the State party.

B. Follow-up measures undertaken and progress achieved by the State party

3. The Committee welcomes the State party's accession to the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, to the

1980 Hague Convention on the Civil Aspects of International Child Abduction and to the 1994 Inter-American Convention against the International Traffic in Minors.

4. The Committee welcomes the signing of a memorandum of understanding (1996) between the State party and the International Labour Organization (ILO)/International Programme for the Eradication of Child Labour (IPEC), for implementing a programme for the eradication of child labour.

5. In the light of its recommendations (see CRC/C/15/Add.11, paras. 11 and 15), the Committee welcomes the enactment of the Children and Adolescents Code (1998) and the participation of non-governmental organizations in the drafting of the Code. The Committee also welcomes the enactment of additional legislation on children's rights-related issues, such as the Law for Equal Opportunities for the Disabled (1996), the Law on Juvenile Justice (1996), the Maintenance Payment Act (1996) and the Law for the Protection of Adolescent Mothers (1997).

6. The establishment of a Children and Adolescents section, under the Office of the Ombudsman (Defensor del Pueblo), is considered as a positive measure, in accordance with the Committee's recommendation (CRC/C/15/Add.11, paras. 7 and 11). In this regard, the Committee also welcomes the fact that the Office of the Ombudsman has established a Permanent Forum for the Evaluation of the Implementation of the Children and Adolescent Code, which functions with the participation of civil society.

7. With regard to its recommendation (see CRC/C/15/Add.11, paras. 7 and 11) concerning the need to strengthen the State party's coordination and monitoring mechanisms for the implementation of the Convention, the Committee welcomes the creation of the National System for the Integral Protection of Children, and the National Council on Children and Adolescents, and the enactment of the Organic Law on the National Children's Trust (Patronato Nacional de la Infancia-PANI) (1996).

8. The establishment of the Ministry of Women's Affairs and the enactment of the Law against Domestic Violence (1996) and the Law on the Equality of Women are regarded as important contributions to the prevention and treatment of violence against children in general and as significant support to the improvement of the situation of girls in

particular, in line with the Committee's recommendation (see CRC/C/15/Add.9 and 16).

C. Factors and difficulties impeding further progress in the implementation of the Convention

9. The Committee notes that poverty and socio-economic and regional disparities within the State party are still affecting the most vulnerable groups, including children, and hamper the enjoyment of the rights of the child.

D. Principal subjects of concern and Committee recommendations

D.1 General measures of implementation

Legislation and institutional reform

10. Although the Committee welcomes the enactment of the Children and Adolescents Code (1998) and other related legislation, which are in line with the Committee's recommendation (see CRC/C/15/Add.11, para. 11), it remains concerned about the insufficient allocation of resources, both human and financial, to support the process of institutional reform necessary to guarantee the full implementation of this legislation. The Committee recommends that the State party continue taking effective measures to carry out the necessary institutional reform to guarantee the full implementation of the Children and Adolescents Code and other legislation related to the rights of the child. In this regard, the Committee encourages the establishment of the Children and Adolescents Protection Boards (Juntas de Protección a la Niñez y Adolescencia) as decentralized institutions to guarantee the implementation of the Code. Furthermore, the Committee recommends that the State party take all necessary steps, including international co-operation, to provide PANI and the Protection Boards with adequate financial and human resources to enable them to carry out their mandate in an effective manner.

Coordination and monitoring

11. While noting the measures taken by the State party to establish adequate coordination between various entities dealing with issues relating to children, both at the national and local levels, the Committee is still concerned about the inadequate levels of representation of all actors and sectors in these coordination

mechanisms. The Committee recommends that the State party take effective measures to guarantee broader representation of all actors involved in the implementation of the Convention in the existing coordinating and monitoring mechanisms (e.g., Council on Children and Adolescents, Children and Adolescents Protection Boards), including at the municipal level, in order to strengthen their role.

Data collection system

12. With regard to the implementation of the Committee's recommendation (CRC/C/15/Add.11, para.12) concerning the need to develop a data collection system on children's rights, and taking into consideration the measures taken by the State party in this area, the Committee remains concerned about the lack of national disaggregated data on all the areas covered by the Convention. The Committee recommends that the State party continue reviewing and updating its data collection system, with a view to including all areas covered by the Convention. Such a system should include all children under 18 years of age and specifically emphasize vulnerable groups of children as a basis for assessing progress achieved in the realization of children's rights and for helping design policies for better implementation of the provisions of the Convention. In this regard, the Committee encourages the State party to seek technical assistance from, *inter alia*, UNICEF.

Training for professionals

13. While noting with appreciation the information on the conduct of training programmes for professionals working with and for children, the Committee is of the opinion that such measures need to be reinforced. The Committee recommends that the State party continue with its efforts to undertake systematic education and training programmes on the provisions of the Convention for all professional groups working for and with children, such as judges, lawyers, law enforcement officials, civil servants, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, and social workers. Technical assistance from, inter alia, the Office of the High Commissioner for Human Rights and UNICEF could be sought in this regard.

Allocation of budgetary resources

14. Although the Committee welcomes the adoption of National Plans of Action for Children and Adolescents and of the National Plan for Human Development, it remains

concerned at the cuts in social expenditure in the national budget, as a result of the recent economic reforms, and at their negative impact on health, education and other traditional welfare areas for children. In the light of articles 2, 3 and 4 of the Convention, the Committee reiterates its recommendation (see CRC/C/15/ Add.11, para. 13) and further recommends that the State party take effective measures to allocate the maximum extent of available resources for social services and programmes for children, and that particular attention be paid to the protection of children belonging to vulnerable and marginalized groups.

D.2 General principles

The right to non-discrimination (art. 2)

15. With regard to the implementation of article 2 of the Convention, the Committee expresses its concern at the manifestations of xenophobia and racial discrimination against immigrants, particularly children belonging to Nicaraguan families residing illegally in the State party's territory; at the marginalization of children belonging to indigenous populations and to the Black Costa Rican ethnic minority; and at the regional disparities, in particular between the developed Central Valley and the less developed coastal regions and border areas. The Committee recommends that the State party increase measures to reduce socio-economic and regional disparities; and to prevent discrimination against the most disadvantaged groups of children, such as the girl child, children with disabilities, children belonging to indigenous and ethnic groups, children living in and/or working on the streets and children living in rural areas. Furthermore, the Committee also recommends that the State party undertake educational campaigns to raise awareness in order to prevent and combat discrimination on the grounds of gender, ethnic and/or national origin. In this regard, the Committee endorses the recommendations made by the Human Rights Committee (CCPR/ C/79/ Add.107) and the Committee for the Elimination of Racial Discrimination (CERD/C/304/Add.71).

D.3 Civil rights and freedoms

16. The Committee notes with appreciation that the State party's domestic legislation has integrated provisions guaranteeing the participatory rights of children. However, it remains concerned that, in practice, these rights are not sufficiently implemented at

the various levels of Costa Rican society. In the light of articles 12 to 17 and other related articles of the Convention, the Committee recommends that further efforts be made to ensure the implementation of the participatory rights of children, especially their rights to participate in the family, at school, within other institutions and in society in general. Awareness raising among the public at large, as well as educational programmes on the implementation of these principles, should be reinforced in order to change traditional perceptions of children as objects and not as subjects of rights.

17. The Committee expresses its concern about the inadequate enforcement of the prohibition on the use of corporal punishment in schools and other institutions and in the penal system. In addition, the Committee expresses its concern that the practice of physical punishment of children in the home is not expressly prohibited by law and remains regarded as socially acceptable. The Committee recommends that the State party prohibit the use of corporal punishment in the home and take effective measures to enforce the legal prohibition of corporal punishment in schools and other institutions and in the penal system. The Committee further recommends that the State party undertake educational campaigns for the development of alternative disciplinary measures for children at home, in schools and other institutions.

18. Although the Committee is aware that the State party's domestic legislation has included the right of the child to physical integrity (Children and Adolescents Code, art. 24) and that no cases of torture of children have been reported in the State party, concern is expressed at the lack of explicit legislation prohibiting the use of torture and that no sanction is provided in the legislation for those responsible for torture. In the light of article 37 (a), the Committee recommends that the State party include a provision in its domestic legislation prohibiting children from being subjected to torture and establishing appropriate sanctions against the perpetrators of torture.

D.4 Family environment and alternative care

Domestic and intercountry adoption (art. 21)

19. The Committee notes the amendments to the State party's legislation on adoption, in line with the Committee's recommendation

(see CRC/C/15/Add.11, para. 14). However, the current legislation on adoption does not seem to comply fully with the requirements of the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption, to which Costa Rica is a party. The Committee recommends that the State party take further measures to reform its legislation, in accordance with the requirements of the abovementioned Hague Convention, to which Costa Rica is a party.

Child abuse, neglect, maltreatment and violence (art. 19)

20. While the Committee takes note of the State party's efforts to prevent and combat cases of abuse and ill-treatment of children, it is of the opinion that these measures need to be reinforced. Concern is also expressed at the insufficient awareness regarding the harmful consequences of neglect and abuse, including sexual abuse, both within and outside the family. Concern is also expressed at the insufficient resources, both financial and human, as well as at the lack of adequately trained personnel, to prevent and combat such abuse. The insufficiency of rehabilitation measures and facilities for victims, and their limited access to justice are also matters of concern. In the light of, *inter alia*, articles 19 and 39 of the Convention, the Committee recommends that the State party take effective measures, including reinforcing current multidisciplinary programmes and rehabilitation measures, to prevent and combat child abuse and ill-treatment of children within the family, at school and in society at large. It suggests, inter alia, that law enforcement should be strengthened with respect to such crimes; adequate procedures and mechanisms to deal with complaints of child abuse should be reinforced, in order to provide children with prompt access to justice and to avoid the impunity of offenders. Furthermore, educational programmes should be established to combat traditional attitudes within society regarding this issue. The Committee encourages the State party to consider seeking international cooperation to this effect from, inter alia, UNICEF and international non-governmental organizations.

D.5 Basic health and welfare

Right to health and access to health services (art. 24)

21. The Committee welcomes the State party's

efforts to fulfil the goals set by the World Summit for Children. However, it remains concerned about regional inequalities in access to health services, as well as in immunization coverage and infant mortality rates. The Committee recommends that the State party continue taking effective measures to ensure access to basic health care and services for all children.

Adolescent health (art. 24)

22. With regard to adolescent health issues (see CRC/C/15/Add.11, para. 16), while taking note of the measures taken by the State party in this field, the Committee remains concerned at the high and increasing rate of teenage pregnancies; at the insufficient access by teenagers to reproductive health education and counselling services, including outside school; and at the increasing rate of substance abuse among adolescents. The Committee recommends that the State party undertake effective measures to develop adolescent friendly health policies and strengthen reproductive health education and counselling services in order, inter alia, to prevent and reduce teenage pregnancies. The Committee also recommends that further efforts be undertaken for the development of child friendly counselling services, as well as care and rehabilitation facilities, for adolescents. Measures to prevent and combat substance abuse among adolescents should be strengthened.

Children with disabilities (art. 23)

23. While the Committee welcomes the fact that the State party has established a special programme to protect the rights of children with disabilities, it remains concerned at the lack of adequate infrastructure, the limited qualified staff and the specialized institutions for these children. In the light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and of the Committee's recommendations adopted on its Day of General Discussion on Children with Disabilities (CRC/C/69), the Committee recommends that the State party develop early identification programmes to prevent disabilities, implement alternative measures to the institutionalization of children with disabilities, envisage awareness-raising campaigns to reduce discrimination against them, establish special education programmes and centres as needed and encourage their inclusion in the educational system and in society, and establish adequate monitoring of private institutions for children with disabilities. The Committee further recommends that the State party seek technical

cooperation for the training of professional staff working with and for children with disabilities.

D.5 Education, leisure and cultural activities

24. With regard to education, the Committee welcomes the fact that the State party's budget allocation to education is one of the highest among developing countries and that measures are being taken, in cooperation with the World Bank (Basic Education Project), to improve primary education, specially for children living in rural and marginal areas. However, the Committee remains concerned that there is an increase in students' drop-out rates between primary and secondary school, due to the limited relevance of the school curricula, as well as to economic and social factors, such as the early insertion of children in the informal labour market. Concern is also expressed about discrepancies in access to education between urban and rural areas and the decrease in the quality of schools infrastructure. The Committee recommends that the State party continue with its efforts in the field of education by strengthening its educational policies and system in order to reduce regional disparities in access to education and to establish retention programmes and vocational training for drop-out students. The Committee further recommends that the State party conduct continuous training programmes for teachers on human rights, including children's rights. The Committee encourages the State party to consider seeking technical assistance in this area, *inter alia* from UNESCO and UNICEF.

D.6 Special protection measures

Children belonging to minority and indigenous groups (art. 30)

25. The Committee remains concerned about the living conditions of children belonging to indigenous and ethnic minority groups, especially with regard to the full enjoyment of all the rights enshrined in the Convention. Concern is also expressed about the precarious situation of children belonging to Nicaraguan families illegally residing in the State party's territory. In the light of articles 2 and 30 of the Convention, the Committee recommends that the State party take effective measures to protect children belonging to indigenous and ethnic minority groups, as well as children of Nicaraguan families in irregular situations, against discrimination

and to guarantee their enjoyment of all the rights recognized by the Convention on the Rights of the Child.

Economic exploitation (art. 32)

26. While welcoming the measures taken for the elimination of child labour, the Committee is concerned that economic exploitation remains one of the major problems affecting children in the State party. The Committee expresses concern at the insufficient law enforcement and the inadequate monitoring mechanisms to address this situation. In the light of, inter alia, articles 3, 6 and 32 of the Convention, the Committee recommends that the State party continue working in cooperation with ILO/IPEC to implement the national plan for the elimination of child labour and that it undertake all the actions envisaged in the Memorandum of Understanding signed between the State party and ILO/IPEC. The situation of children involved in hazardous labour, especially in the informal sector where the majority of working children are found, deserves special attention. In this regard, the Committee encourages the State party to ratify ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999). The Committee, finally, recommends that child labour laws should be fully enforced, labour inspectorates strengthened and penalties imposed in cases of violation.

Sexual exploitation and abuse (art. 34)

27. The Committee expresses its concern at the high incidence of commercial sexual exploitation of children in the State party, apparently often related to sex tourism. In this regard, while the Committee appreciates the measures taken to prevent and combat sexual abuse and exploitation of children, such as the reforms of the Penal Code (Law 7899 of 1999) and the adoption of a plan of action to tackle this issue, it is of the opinion that these measures need to be reinforced. In the light of article 34 and other related articles of the Convention, the Committee recommends that the State party undertake studies with a view to strengthening current policies and measures, including in the area of care and rehabilitation, in order to prevent and combat this phenomenon. The Committee recommends that the State party take into account the recommendations formulated in the Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm in 1996.

Administration of juvenile justice (arts. 37, 40, and 39)

28. With regard to the administration of juvenile justice, the Committee welcomes the State party's measures to implement the Committee's recommendations (CRC /C/15 /Add.11, para. 15). However, the Committee remains concerned, inter alia, that the new Law on Juvenile Justice (1996) has not yet been fully implemented; that there is an insufficient number of specialized judges; that there is only one specialized centre for children in conflict with the law; that there is a lack of adequate training for the police on the Convention and other relevant international standards; that a large number of children are placed in pre-trial detention; and that the penalties imposed on children in conflict with the law are disproportionately heavy in relation to the nature of the offences. The Committee recommends that the State party continue undertaking effective measures to overcome these and other obstacles in fully implementing its juvenile justice system in accordance with the Convention, especially articles 37, 40 and 39, and other relevant international standards, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty. In this regard, the Committee suggests that the State party consider seeking technical assistance from, inter alia, the Office of the United Nations High Commissioner for Human Rights, the Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF, through the Coordination Panel on Juvenile Justice.

Dissemination of the report (art. 44)

29. Finally, in the light of article 44, paragraph 6, of the Convention, the Committee recommends that the second periodic report and the written replies submitted by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and concluding observations adopted thereon by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention, its implementation and monitoring within the Government, the Parliament and the general public, including concerned non-governmental organizations.

The World Organisation Against Torture (OMCT) wishes to extend its gratitude for their support to the Children's Programme to:

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